Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 77-892

STENSAKER SCHIFFAHRTSGES,

Petitioner,

v.

HENRY WILEY and STEVENS SHIPPING & TERMINAL COMPANY,

Respondents.

BRIEF OF RESPONDENT STEVENS SHIPPING & TERMINAL COMPANY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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OPINIONS BELOW

The opinion the United States Court of Appeals for the Fifth Circuit is reported at _____ and is reproduced as Petitioner's Appendix A, pages A-1 through A-16. The order dated October 21, 1977, denying the petition for rehearing is unreported and is reproduced as Petitioner's Appendix B, pages A-17 through A-18. The order of the United States District Court for the Southern District of Georgia dated September 23, 1975, denying Petitioner's motion for judgment notwithstanding the verdict or for a

new trial is unreported and is reproduced as Petitioner's Appendix C pages A-19 through A-21. The judgment of the United States District Court for the Southern District of Georgia dated July 9, 1975, is unreported and is reproduced as Respondent's Appendix A, pages 1 thru 4.

QUESTIONS PRESENTED

1. Whether the trial court properly charged the jury on the questions of negligence and unseaworthiness on the part of the vessel?

2. Whether evidence that the ship was equipped with a straight steel ladder without non-skid surfaces, coupled with evidence that the ship failed to close a manhole covering during a rainstorm, thereby allowing the ladder to become wet and slippery, was sufficient to support the jury's finding that the vessel was both negligent and unseaworthy, where the plaintiff, a longshoreman, slipped while descending the ladder in question?

3. Whether evidence that the stevedoring company (respondent) and its longshoremen, including the plaintiff, did not know or have reason to know of the slippery condition of the ladder prior to plaintiff's injury was sufficient to support the jury's finding that the negligency and unseaworthiness of the ship was not brought into play by any negligence on the part of the stevedore, and that the stevedore did not breach its warranty of workmanlike performance to the ship?

4. Whether this court should decline to exercise its powers of discretionary review where the points urged for review by Petitioner were not preserved for appeal in the courts below; where there are separate grounds which would require affirmance of the decision of the courts below; and where changes in law governing the

rights and obligations of shipowners, longshoremen and stevedores among themselves, coupled with the fact that the decision of the courts below were based primarily upon the factual determination of a jury, means that a review of this case would not result in any meaningful precedent for future cases of a similar nature?

STATUTES

This case involves in part the provisions of Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §901 *et seq.* as they existed prior to the amendments in 1972, and also certain of the Safety and Health Regulations for Longshoring, *i.e.*, C.F.R. §§1918.25(a), 1918.25(b), and 1918.91(c).

STATEMENT OF THE CASE

This case arised out of an action by Henry Wiley, Plaintiff, against Stensaker Schiffahrtsges (Shipowner), owner of the M/V HANSA TRADE, for injuries alleged to have been incurred by Wiley while employed as a longshoreman engaged in loading bulk clay upon the HANSA TRADE. Wiley's Complaint against Stensaker alleged unseaworthiness on the part of the vessel, negligence on the part of the shipowner, and violation of the Safety and Health Regulations for Longshoring. Stensaker impleaded Stevens Shipping & Terminal Company (Stevens), the stevedore company which employed Wiley and which was engaged in loading the clay cargo aboard the HANSA TRADE at the time of the incident complained of.

The Plaintiff alleged that he slipped and injured his back while descending a straight steel rung ladder aboard the HANSA TRADE on May 27, 1972. There were no witnesses to this accident, other than the Plain-

tiff, but no evidence tending to show that Plaintiff did not slip and fall as alleged. The remaining facts of the case, however, were in sharp dispute. The Plaintiff, Wiley, and a fellow longshoreman, Smith, testified in substance that they began work at 8:00 A.M. by descending a steel rung ladder, which was some thirty feet length, to the number one hold of the HANSA TRADE, and there began spreading plastic covering on the floor of the ship in preparation for loading bulk clay. Shortly thereafter, the stevedore began blowing bulk clay into the ship until, according to Wiley and Smith, at some point during the morning, the longshoremen were ordered up on deck because of rain and the loading operations could not continue. Wiley and Smith testified that they ascended from the hold by means of the steel rung ladder which is the sole means of ingress and egress to the hold and that as they ascended the ladder, rain water was descending through the open manhole cover on deck. Smith testified that they sought shelter on board ship until the rain ceased, then returned to the manhole, where Wiley descended into the hold. Wiley descended the ladder first, and when Smith followed a few minutes later he was informed by Wiley that he (Wiley) had slipped and injured his back while descending the ladder. Smith testified that they inspected the ladder and found an accumulation of wet clay on one of the rungs. Smith at first testified that the clay had been picked up by Wiley's shoes while walking on the deck, but subsequently withdrew that conclusion and declined to speculate on where the clay might have come from. Smith testified that Wiley remained in the hold for a period of time before reporting his injury to the foreman, and thereafter remained on duty until 6:00 P.M.

The evidence was in dispute as to whether or not a dangerous condition existed prior to Wiley's fall, or if such condition existed, whether or not it was ever brought to the attention of the stevedore. Both Wiley and Smith testified that they had no difficulty in descending the ladder to begin work in the hold of the HANSA TRADE at 8:00 A.M. They further testified that they had no trouble coming up the ladder when work stopped and they were called back on deck. In the words of Mr. Smith, "We got out of there pretty good. We got out pretty good." Smith testified that he complained to the foreman, Mr. Bryant, about the slippery conditions on the deck, but admitted that he never complained about any condition of the ladder. Furthermore, although Wiley at first testified that "someone talked to the stevedore" about the condition of the ladder, he never stated whether this was before or after the accident, and he subsequently withdrew even this vague testimony, admitting that he had no recollection of whether he or anybody else ever complained about the situation down in the hold. He admitted, however, that he never objected to the header about having to go back down the ladder, and that he has no independent recollection of the ladder being wet when he left the hold. Finally, although Mr. Smith contends that he complained to his foreman about the slippery condition of the decks, it does not appear that the complaint was made before Mr. Wiley was injured, and even this testimony was contradicted by that of David Sipple, an attorney who testified that prior to trial, he took the statement of Albert Smith and that he (Smith) told Sipple that he could recall no complaints being made either to the header or the foreman regarding any condition on the ship that date.

Assuming that rain water entered the hold through the open manhole cover and thereby got on the ladder and contributed to the Plaintiff's injuries, the evidence was nonetheless in sharp dispute as to whether it was the duty of the ship or of the stevedore to close this cover, or whether the cover was ever closed during the work stoppage. The hatch was necessarily open for the length of time necessary for Wiley and Smith to leave the hold of the ship, and neither Wiley nor Smith have any independent recollection of closing the hatch. It was undisputed that main hatch covers were opened and closed mechanically, that the controls for these hatches were immediately beside the hatch openings, and that it was the duty of the ship's crew to open and close these hatches. Mr. Wiley testified that although the longshoremen "could" pull the manhole cover down when they exited the hold, if the cover had "mechanical things and bolt down," it was the responsibility of the ship's crew to secure this cover as well. As the trial judge recognized when the new trial motion was argued, even though both Wiley and Smith became confused during their testimony and referred to the manhole cover as a hatch, there was testimony that closing the hatch (manhole cover) was the responsibility of the ship's crew. And, the stevedore foreman, Mr. Taylor, testified that while they would expect the last man up the ladder to close the hatch, they are not required to do so and that it is the ultimate responsibility of the ship's crew to make the hatch weather tight.

There was a further sharp dispute as to the extent of accumulation of clay on the decks and ladder, and whether the accumulation was sufficient to warrant hosing it down or taking other corrective measures. Mr. Smith testified that he mentioned the slippery conditions

of the deck, but admits that he did not make an issue of it with his foreman, and further admits that he did not make any complaints about the condition of the ladder. Furthermore, Smith testified that he and Wiley experienced no difficulty in ascending the ladder during the work stoppage. Mr. Taylor testified that the stevedore company will clean the decks if they accumulate an excessive amount of clay, but that a light film of dust is both normal and unavoidable in this type of loading operation. There was also testimony to the effect that the loading operation had continued for only six minutes prior to Mr. Wiley's injury and that any accumulation of clay during that time would have been minimal. Mr. Smith himself testified that the film of dust on the ladder was so light when he and Wiley left the hold that "not all the time you could tell [it was there.]" Finally, Mr. Taylor testified that although a man could theoretically wipe the ladder with rags, the ladder would become covered with clay again almost immediately, and that the stevedore would have to wipe the ladder down continuously and would require one man going up and down the ladder all the time just to keep it wiped down.

There was considerably testimony as to the nature and condition of the ladder itself. There was testimony that there was no apparent structural defect in the ladder itself. Rather, the testimony was to the effect that access to the ladder was through a manhole on the deck of the ship. The ladder was a straight steel-rung ladder which descended vertically some thirty feet from the deck of the ship into the hold, with no intervening decks or landings. There were no handrails, and no holes or non-skid surfaces in the rungs of the ladder itself. From the diagram of the ship introduced into evidence, it is apparent that the ladder descended directly into the hold itself, where

bulk cargo was loaded, and so far as the diagram shows, was not shielded from the blowing cargo in any way. Wiley and Smith testified that they experienced no difficulty in descending the ladder when it was clean and dry when they first entered the ship, but Wiley testified that he slipped and fell after an accumulation of clay and water got on the ladder during a work stoppage. As noted, this ladder provided the sole means of access to and from the hold.

Despite the conflict in the evidence, the log of the ship was never introduced by the Defendant shipowner, although it was demanded by the Plaintiff and although such log would have shown whether or not work had ceased because of rain on the morning in question. Nor did any officer or crew member of the ship testify to the condition of the vessel in general or the ladder in particular; the accumulation, if any, of clay or water on the decks and ladder; the duty of ship's crew relative to closing the manhole cover during inclement weather, or whether the manhole cover or loading hatch was in fact ever closed. Nor was any explanation offered for the absence of such testimony, or any claim made that such evidence was not available to the Defendant shipowner.

The Plaintiff at the conclusion of evidence made a motion for directed verdict against the Plaintiff which was denied; and the Defendant stevedore likewise made a motion for directed verdict against the shipowner, which was denied. The Defendant shipowner did not make a motion for directed verdict against the stevedore.

Following charges to the jury, the jury returned its verdict in special interrogatories to the effect that there was a violation of the Safety and Health Regulations for Longshoring, and that that violation played a part in producing the injuries to the Plaintiff; that the motor

vessel, HANSA TRADE, was unseaworthy; that the unseaworthiness was the cause of the Plaintiff's injuries; that the ship was negligent; that the negligence of the ship was the cause of the Plaintiff's injuries; that the Plaintiff sustained damages in the amount of $250,000; that the Plaintiff was not contributorily negligent; that the unseaworthiness of the ship was not caused or brought into play by any negligence on the part of the stevedore; that the stevedore did not breach its warranty of workmanlike performance to Stensaker and that no conduct on the part of Stensaker would have precluded indemnity by Stevens. Accordingly, the jury found for the Plaintiff, Henry Wiley, and against the Defendant Stensaker, and in favor of the Third-Party Defendant, Stevens Shipping & Terminal Company, and against the Third-Party Plaintiff Stensaker. Defendant Stensaker's motions for judgment notwithstanding the verdict and for new trial were overruled by the District Court. The case was affirmed on appeal to the Court of Appeals for the Fifth Circuit, and this application for a writ of certiorari followed.

REASONS FOR DENYING WRIT

Beginning at Page 8 of its brief, Petitioner advances three reasons for granting a writ of authorities in this case: first, because the trial court erred in charging the shipowner with the duty of complying with the Safety and Health Regulations; second, because the trial court allegedly erred in failing to give the full charge from *Mitchell v. Trawler Racer, Inc.*, 362 U.S. 539 (1960); and third, because shipowner was entitled to a directed verdict against the stevedore. For the purpose of denying this writ, it would be sufficient to note that the objection to the charge were not properly preserved for appeal and

were therefore not considered by the Fifth Circuit, and that Petitioner was not entitled to a directed verdict or judgment against the stevedore because it never moved for a directed verdict against the stevedore. However, a review of the record will reveal not only that the case was properly disposed of by the courts below, but that there are no questions which call for discretionary review by this court.

a. DUTY OF SHIPOWNER TO COMPLY WITH SAFETY REGULATIONS

Relying upon *Gay v. Ocean Transport & Trading, Ltd.*, 546 F.2d 1233 (1977), Petitioner urges that the District Court erred in charging that the shipowner as well as the stevedore had the obligation to comply with the Safety and Health Regulations for Longshoring. However, no such objection was raised to the original charge of the District Court to this effect and *Gay* was neither briefed nor argued to the Court of Appeals in either Petitioner's original brief or supplemental brief. Rather, at page 26 of Petitioner's original brief to the Fifth Circuit, the Petitioner specifically acknowledged that, as the District Court had charged, a violation of the Regulation by the vessel constituted negligence on the part of the vessel. Petitioner is now asking this Court to grant a Writ and reverse the Fifth Circuit on a point which it was never asked to consider, and which is directly contrary to the position taken by the Petitioner in the courts below.

Respondent stevedore believes that the courts below correctly held that the shipowner had the duty to comply with regulations, and that the failure of the ship to do so authorized a finding of both unseaworthiness and negligence. This decision is wholly consistent with *Gay*, upon which Petitioner now relies, which held only that a

violation of the regulation *by the stevedore* was not imimputed to the shipowner. In *Gay* the longshoreman had argued that the ship had a nondelegable duty to provide him with a safe place to work. *Gay*, however, is a post-1972 amendment case. The effect of this amendment was not only to eliminate the ship's third-party action against the stevedore, but also to limit the liability of the ship to longshoremen's claims predicated on the ship's negligence, not on the no-fault concept of unseaworthiness. Under the pre-1972 law, however, which governs this case, the ship owed the longshoreman both the duty of due care and a seaworthy vessel on which to work, and the Regulations were proper measure of this duty to the longshoremen. See *Provenza v. American Export Lines, Inc.*, 324 F.2d 660 (4th Cir. 1963). Therefore, although as Petitioner points out, longshoremen are continuing to sue ships for negligence, their claim for unseaworthiness has been eliminated by the 1972 amendment, and no reconsideration of this pre-1972 case involving entirely different obligations of the ship to the longshoreman, would provide meaningful precedent for future case.

Finally, Respondent believes that no reconsideration of the applicability of the Regulations would change the result of this case. Independent of the question of the Regulations, the jury in response to the special interrogatories found that that ship was unseaworthy, that the ship was negligent, that this unseaworthiness and negligence of the ship caused the Plaintiff's injuries, that the unseaworthiness was not caused or brought into play by any negligence on the part of the stevedore, and that the stevedore did not breach its warranty of workmanlike performance. (Respondent's Appendix A, hereto attached). The evidence in this case was carefully reviewed by the Court of Appeals, and found to be sufficient to

carry the day for the Plaintiff "*both under ordinary principles of unseaworthiness* and by virtue of the violation of the regulations." (emphasis added.) Likewise, the jury's finding that the stevedore did not breach its warranty was held to be supported by the evidence. These findings of fact by the jury, approved by both the District and Circuit Court as to ordinary unseaworthiness and the warranty of workmanlike performance, constitute separate sustaining grounds for the decision below, and no reconsideration by this Court of the Safety and Health Regulations would affect the outcome of the case.

In summary, Respondent submits that this case does not require or justify the exercise by this Court of its discretionary review powers to consider the applicability of the Safety and Health Regulations where (1) the position urged by the Petitioner was neither briefed nor argued in the Court below, and this Court does not have the benefit of the Circuit Court's reasoning on the question; (2) the law governing the instant case relative of the duties of ship toward its longshoremen has since been changed, and the decision of this Court in the present case would not serve as a precedent for cases now arising under the new law; and (3) there are separate grounds for sustaining the decision of the Courts below, and the ruling urged by the Petitioner would not affect the outcome of the case as it now stands.

b. CHARGE FROM *MITCHELL v. TRAWLER RACER*

Petitioner has also requested a Writ of Certiorari because the District Court failed to give the "full charge" from *Mitchell v. Trawler Racer, Inc.*, 362 U.S. 539 (1960). This is more specific than the exception presented to the Circuit Court, where Petitioner asserted what the

Fifth Circuit termed a "catch-all" objection to the trial court's "improperly charging the jury, structuring the charges improperly, failing to sever the claims, refusing to give certain charges requested by [shipowner]; recharging the jury, causing confusion and leaving the jury with no understanding of the distinction between [shipowner's] obligation to [Plaintiff] and [stevedore's] obligation to [shipowner]." The Fifth Circuit refused to consider this objection to the charge on the grounds that Petitioner had not properly preserved it for appeal.

In its application to this Court for the Writ, Petitioner does not specify what essential part of the *Mitchell v. Trawler Racer* charge the trial court failed to give but does refer to page 550 of this Court's opinion in that case where there appears the following language:

> "What has been said is not to suggest that the owner is obligated to furnish an accident-free ship. The duty is absolute, but it is a duty only to furnish a vessel and appurtenances reasonably fit for their intended use. The standard is not perfection, but reasonable fitness; not a ship that will weather every conceivable storm or withstand every imaginable peril of the sea, but a vessel reasonably suitable for her intended service."

Respondent has reviewed the original charge of the trial court and Petitioner's objection to this charge. The trial court stated that it was not the obligation of the shipowner to furnish an "accident free ship," that it was not obligated to have the best appliances or finest of crews, only such as are reasonably proper and suitable for their intended use. Indeed, the Court repeatedly emphasized that the ship need be only reasonably fit for the intended purposes, and the only portion of the *Trawler Racer* request which was not given was that portion con-

cerning "a ship which will weather every conceivable storm or withstand every imaginable peril of the sea." Since the accident complained of occurred in calm water while the vessel was tied to a dock, a charge on "every imaginable peril of the sea" would have been unnecessary if not inappropriate to the present case.

Respondent submits that the trial court fully and fairly charged the jury on the definition of unseaworthiness, that it properly omitted the "peril of the sea language," and that the question presented by Petitioner does not call for discretionary review by this Court, especially where the point was not preserved for appeal, was neither briefed nor argued to the court below, and this court does not have the benefit of the Circuit Court's opinion on the question.

c. CLAIM FOR DIRECTED VERDICT OR JUDGMENT NOTWITHSTANDING THE VERDICT

Petitioner finally attacks the trial court and the Circuit Court for failing to grant a directed verdict or judgment notwithstanding the verdict in favor of the ship and against the stevedore. It is not necessary in this brief to summarize the testimony at length especially in view of the Circuit Court's thorough review of the same in its opinion. Although much of the testimony in the case was in conflict, the evidence would allow a jury to conclude that the Plaintiff slipped on a straight steel rung ladder which had been coated with a mixture of clay dust and water. The powdered clay adhered to the ladder during the loading operations, which involves blowing bulk powder into the hold of the ship. The clay itself was not slippery and did not become so unless mixed with water, and the jury would have been authorized to find that rainwater got onto the ladder, causing it to become slippery, because the ship's personnel failed to secure a man-

hole cover during a work stoppage. Thus, as the Circuit Court held, and contrary to the unsupported assertion of the Petitioner that the stevedore caused the unseaworthy condition, the jury's verdict that the ship was both negligent and unseaworthy could be premised either on the use by the ship of a straight steel runged ladder without a non-skid surface, or the failure of the ship to close the manhole cover to prevent rainwater from getting on the ladder and mixing with the film of powdered clay. Again contrary to the assertion of the Petitioner that the stevedore knew of the slippery condition of the ladder, there was evidence that neither the Plaintiff nor the other longshoreman had any difficulty on the ladder either descending to begin work or in exiting the the hold during the work stoppage, and that the film of clay on the ladder when they exited was so light that "not all the time you could tell it was there." No longshoreman preceded the Plaintiff back down the ladder after the work stoppage, and construction of the ladder was such that he could not observe the rungs beneath him as he descended. Thus, the evidence fully supported the conclusion that the slippery condition arose during the work stoppage; that the stevedore was not aware of this condition, and consequently the Plaintiff was not contributorily negligent and the stevedore did not breach its warranty to the ship by returning to work following the stoppage.

Questions of negligence, contributory negligence and unseaworthiness are properly questions for the jury under instruction from the trial court. Each case necessarily stands on its own facts, and, if the evidence is in conflict, cases with identical evidence may have opposite results, depending on the jury's view as to the preponderance of that evidence. Therefore, no review of the evidence in this

case by this Court would result in a meaningful precedent for future cases of a similar nature, particularly in view of the 1972 amendment which changed the obligations of the shipowner toward longshoremen working aboard his vessels.

CONCLUSION

The Supreme Court should deny the Writ of Certiorari (1) where the questions urged for review were not properly preserved for appeal in the courts below, and were not considered by the Court of Appeals; (2) where aside from the questions urged by the Petitioner, there are separate grounds which would require that the decision of the court below be affirmed; and (3) where because of the change in the law as to the obligation of the shipowner toward longshoremen working aboard the vessel, no decision of this court in the present case would provide meaningful guidance in future cases of injuries to longshoremen.

Respectfully submitted,

By _____

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that three (3) copies of the foregoing Brief in Opposition to Petition for Certiorari were served on Barnard M. Portman, Esquire, Smith & Portman, P.C., P.O. Box 9565, Savannah, Georgia, 31402, and George H. Chamlee, Esquire, Dubus & Sipple, P.O. Box 9523, Savannah, Georgia, 31402, by placing the same in the U.S. Mail, first class, postage prepaid, this 16th day of January, 1978.

_____

Counsel for Respondent

APPENDIX A

[Filed July 9, 1975]

IN THE
UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

HENRY WILEY, *Plaintiff,* *v.* STENSAKER SCHIFFAHRTSGES, *Defendant and Third-Party Plaintiff,* *v.* STEVENS SHIPPING & TERMINAL COMPANY, *Third-Party Defendant,*	)	**Civil Action No. 474-96**

JUDGMENT OF THE COURT

This action came on for trial before the Court and a jury, Honorable Anthony A. Alaimo presiding, and the issues having been duly tried and the jury having duly rendered the following verdict on special interrogatories, to-wit:

"1(a) Was there a violation of any of the Safety and Health Regulations for Longshoring previously read to you, and did this violation play any part in producing the injury to the Plaintiff?

Yes __x__ No _____

1. Was the Motor Vessel HANSA TRADE unseaworthy?

Yes __x__ No _____

2. If yes, was the unseaworthiness a cause of Plaintiff's injuries?

Yes __x__ No _____

3. Was Stensaker Schiffahrtsges negligent?

Yes __x__ No _____

4. If yes, was that negligence a cause of Plaintiff's injuries?

Yes __x__ No _____

5. If the answer to 1(a) is yes, or the answer to 1 and 2 are yes, or the answer to 3 and 4 are yes, at what amount do you fix the damages sustained by the plaintiff as a result of the accident of which he complains?

$ 250,000.00

6. Was the plaintiff, Henry Wiley, negligent?

Yes _____ No __x__

7. If yes, was that negligence a cause of the injuries?

Yes _____ No __x__

8. If the answers to 6 and 7 are yes, to what degree was plaintiff negligent?

(0% to 100%) __0__

9. If the answers to 1(a) or 1 and 2 are yes, was such unseaworthiness caused or brought into play by any negligence on the part of Plaintiff's employer, Stevens Shipping & Terminal Company, its agents or employees?

Yes _____ No __x__

10. Did Stevens Shipping & Terminal Company, its agents or employees breach its warranty to perform its job in a reasonably safe, proper and workmanlike manner?

Yes _____ No __x__

11. If the answer to 10 is yes, was such breach the legal cause of Plaintiff's injuries?

Yes _____ No __x__

12. If the answer to 10 and 11 above is yes, was the unseaworthiness or negligence, if any, by Stensaker Schiffahrtsges, the shipowner so great as to preclude it from a recovery against Stevens Shipping & Terminal Company on the stevedore's warranty of workmanlike service?

Yes _____ No __x__

CHECK THE APPROPRIATE VERDICTS:

(x) We, the jury, find for the plaintiff, Henry Wiley, and against the defendant, Stensaker Shiffahrtsges, as indicated above.

( ) We, the jury, find for the defendant, Stensaker Shiffahrtsges, and against the plaintiff, Henry Wiley, as indicated above.

( ) We, the jury, find for third-party plaintiff, Stensaker Schiffahrtsges, and against third-party defendant, Stevens Shipping & Terminal Company.

(x) We, the jury, find for third-party defendant, Stevens Shipping & Terminal Company, and against third-party plaintiff, Stensaker Schiffahrtsges."

It is therefore Ordered and Adjudged:

1. That the Plaintiff, Henry Wiley, recover of the defendant, Stensaker Schiffahrtsges, the sum of $250,000 and his costs of action.

2. With reference to the third-party suit of Stensaker Schiffahrtsges, defendant and third-party plaintiff, against Stevens Shipping & Terminal Company, third-party defendant,

It is Ordered and Adjudged:

That the third-party plaintiff take nothing, that the action be dismissed on the merits, and that third-party defendant, Stevens Shipping & Terminal Company, recover third-party plaintiff, Stensaker Schiffahrtsges, its costs of action.

3. As previously agreed among the parties, a separate judgment will be entered by the Court upon the intervening claim of Hartford Accident & Indemnity Company.

This 9th day of July, 1975.

/s/ Anthony A. Alaimo

Judge, U.S. District Court